

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 73 and 74 of the	)	
Commission's Rules to Establish Rules	)	
For Digital Low Power Television,	)	MB Docket No. 03-185
Television Translator, and Television	)	
Booster Stations and to Amend Rules	)	
For Digital Class A Television Stations	)	

To: the Commission

COMMENTS ON  
NOTICE OF PROPOSED RULEMAKING

CAVALIER GROUP, LLC  
R. Nash Neyland  
2679 Crane Ridge Drive  
Suite C  
Jackson, MS 39216  
(601) 420-7029

Dated: November 25, 2003

## TABLE OF CONTENTS

<b>SUMMARY.....</b>	<b>ii</b>
I. INTRODUCTION.....	1
II. THE COMMISSION IS WRONG IN ITS ASSUMPTION THAT NEW LICENSEES WILL NOT BEGIN PROVIDING SERVICES IN THE LOWER 700 MHz BAND IN THE NEAR FUTURE. ....	2
III. GRANTING SECONDARY STATIONS AN ADDITIONAL CHANNEL FOR DIGITAL OPERATIONS WOULD BE HARMFUL TO CAVALIER AND OTHER NEW LICENSEES. ....	6
IV. ADDITIONAL DIGITAL TELEVISION STATIONS WILL HAVE LITTLE OR NO MEANINGFUL IMPACT ON CONSUMER ADOPTION OF DIGITAL TELEVISION AT THIS TIME. THERE IS NO NEED OR COMPELLING REASON TO GRANT SECONDARY STATIONS A SEPARATE CHANNEL FOR DIGITAL OPERATIONS AT THIS TIME. ....	9
V. GRANTING SECONDARY STATIONS A SECOND CHANNEL FOR DIGITAL OPERATIONS WOULD BE HARMFUL TO THE DTV TRANSITION.....	11
VI. GRANTING SECONDARY STATIONS A SEPARATE DIGITAL CHANNEL WOULD FRUSTRATE THE COMMISSIONS ABILITY AND WILLINGNESS TO ADOPT OR AUTHROIZE CLEARING MECHANISMS DESIGNED TO CLEAR THE 700 MHz BAND OF TELEVISION INCUMBENCY.....	12
VII. SECONDARY STATIONS SHOULD BE ALLOWED TO FLASH CONVERT ON THEIR ANALOG CHANNELS, AND SHOULD BE REQUIRED TO CONVERT ONCE THEIR PRIMARY STATION CONVERTS TO DIGITAL.....	14
VIII. SHOULD THE COMMISSION PROCEED TO GRANT SECONDARY STATIONS ADDITIONAL SPECTRUM FOR NEW DIGITAL OPERATIONS, IT MUST ENSURE THAT SUCH STATIONS ARE OPERATED IN A MANNER THAT EFFECTIVELY PROMOTES THE DTV TRANSITION.....	15
IX. CONCLUSION. ....	17

## SUMMARY

Cavalier Group, LLC (“Cavalier”) is the winning bidder of 51 C Block licenses auctioned by the Federal Communications Commission (“Commission”) in Auctions 44 and 49. These licenses are for paired blocks of 6 MHz spectrum in the Lower 700 MHz bands being effectively channels 54 and 59. Cavalier has *paid* for its licenses. Cavalier opposes certain of the actions proposed by the Commission in these proceedings, particularly the potential allocation of spectrum in the Lower 700 MHz band (Channels 52-59) for new digital services by LPTV, television translators and booster stations (“Secondary Stations”) on the following grounds:

- Granting a second channel to Secondary Stations for digital operations would be harmful to Cavalier and other Lower 700 MHz licensees (“New Licensees”). Regardless of the new stations’ “secondary” status, New Licensees would still have to deal with the new digital stations. That would take time and money better spent on bringing new wireless services to the 700 MHz band.
- The Commission is wrong in its assumption that New Licensees will not utilize their licenses to provide services in the near future, particularly in rural areas and other urban areas where there currently is no television interference. After a year of extensive efforts by New Licensees we are finally at the point where equipment is being manufactured for the 700 MHz band and systems are being deployed. New Licensees will soon begin deploying equipment and providing services in the Lower 700 MHz band. The first providers most likely would be in rural and urban areas where there are no television interference concerns.

- It is bad public policy for the Commission to foster an environment at this time that encourages Secondary Stations to spend the time, money and effort to construct and operate expensive separate digital facilities on an out-of-core channel. It will be virtually impossible for a LPTV station to co-exist on a channel already licensed to New Licensees as well as on any channel in use by or allocated to existing NTSC and DTV stations. It may be extremely hard to find *available spectrum* for a Secondary Station to operate on any channel adjacent to New Licensees, NTSC and DTV stations. Therefore, for all practical purposes channels 53, 54, 55, 56, 58, 59 and 60 should not be viewed as *available spectrum*.
- It is not necessary to grant Secondary Stations a separate 6 MHz channel for digital operations at this time in order to drive the DTV Transition. Over 99% of the television households in the nation are in markets where DTV stations are already in operation; over 86% are in markets serviced by 5 or more DTV stations; and over 56% are in markets serviced by 8 or more DTV stations. The number of television households with actual access to over-the-air digital programming will further increase as DTV stations replicate and maximize their respective DTV service areas. If a significant number of television households do not have access to over-the-air digital programming, the answer lay not in throwing Secondary Stations into the fray, but by expediting replication and maximization deadlines.
- There exists sufficient critical mass of over-the-air digital programming to drive consumer demand for digital television as far as consumer demand for digital

programming can be driven by over-the-air broadcasting at this time. **At this stage of the DTV Transition we do not need additional over-the-air digital programming; we need more people watching the digital programming that is available!** Digital “must carry” is the answer and we urge the Commission to move expeditiously to bring that to reality.

- The use of available in-core television spectrum for separate Secondary Station digital operations would be harmful to the DTV Transition. There is no compelling reason why the Commission should add additional interference to the in-core channels at a time when existing DTV stations are struggling with existing interference and struggling to make an informed channel election. The Commission should defer granting Secondary Stations a separate channel for digital operations until after all DTV stations have made their channel elections.
- Secondary Stations should be allowed to flash convert to digital on their analog channels. LPTV stations which are really television translators, television translators and booster stations should be required to convert to digital when their primary station transitions to digital.
- To the extent there is *available spectrum* on channels located within the in-core television channels, the Commission should use that *available spectrum* to help clear the 700 MHz band of existing television incumbency. The Commission should endeavor to craft and promote innovative band clearing mechanisms that would clear the 700 MHz band of television incumbency by a date certain and allow the DTV Transition to proceed on the in-core channels at whatever pace is driven by consumer demand.

The DTV Transition is a complex and evolving process. It is just now beginning to accelerate thanks to significant efforts of the Commission with respect to the digital tuner mandate and plug-and-play compatibility. Digital “must carry” is, hopefully, on the near horizon. A substantial number of DTV stations have just recently started operations and are easing in to the digital broadcasting world. Now is not the time to add further confusion and complexity to the DTV Transition by introducing new Secondary Station digital channels which, at this time and until the channel election process has run its course, would be harmful to the DTV Transition and would have little meaningful impact on consumer adoption of digital television. And at a time when the Commission is striving to promote broadband deployment, new digital wireless services, competition to existing wireline and wireless voice, data and video providers, to provide “more broadband pipes” into homes and business, especially in rural American, AND to clear the 700 MHz band, granting new digital channels on any out-of-core channels would be a giant leap in the wrong direction.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 73 and 74 of the	)	
Commission's Rules to Establish Rules	)	
For Digital Low Power Television,	)	MB Docket No. 03-185
Television Translator, and Television	)	
Booster Stations and to Amend Rules	)	
For Digital Class A Television Stations	)	

To: the Commission

COMMENTS ON  
NOTICE OF PROPOSED RULEMAKING

---

**I. INTRODUCTION**

Cavalier Group, LLC ("Cavalier") hereby submits its comments in response to the Commission's *Notice of Proposed Rulemaking* ("NPRM"), FCC 03-185, released August 29, 2003, in the above captioned proceeding. Cavalier holds the second largest number of Lower 700 MHz C Block licenses auctioned in FCC Auctions 44 and 49 with licenses for 51 markets covering a total of approximately 38 million people. Cavalier's licenses are for highly congested, high population markets such as New York, Boston and Philadelphia, as well as for rural areas in 14 different states. Cavalier opposes the Commission's proposal to grant Secondary Stations an additional 6 MHz television channel for separate digital operations at this time. The Commission should defer such action until after the existing DTV stations have made their channel elections.

**II. THE COMMISSION IS WRONG IN ITS ASSUMPTION THAT NEW LICENSEES WILL NOT BEGIN PROVIDING SERVICES IN THE LOWER 700 MHZ BAND IN THE NEAR FUTURE.**

Cavalier and many other New Licensees have been working hard over the past 12 months to get to the position where we are today with equipment tuned for the 700 MHz band being manufactured and systems being deployed. New Licensees are working hard to put our respective licenses to use and provide mobile and other wireless voice and broadband data services in our respective markets. These are services that would be competitive to existing wireless and wireline voice, data and video providers. In some markets, particularly the more congested high population markets, that may not be possible *at this time* due to television incumbency. We are confident, however, that even many of the congested markets may open for new 700 MHz band wireless services in the near future, either due to band clearing arrangements, interference agreements or station conversion to in-core digital operations.

We are also exploring opportunities to provide services in both urban and rural markets where there currently exists no television interference. Commercial deployment of new 700 MHz systems, particularly in rural America, will become a reality in many markets over the next year.

One of the major factors impacting the ability of New Licensees to effectively deploy new wireless systems has been the availability of affordable infrastructure equipment and consumer devices. As the Commission well knows, the Lower 700 MHz band is “new” for wireless voice, data and video services. At the time of the first auction of Lower 700 MHz licenses there were no manufacturers of infrastructure and consumer equipment specifically banded for wireless voice or data services utilizing 700 MHz



spectrum. Early interest arose from a handful of infrastructure equipment manufacturers, including without limitation, Lucent, Flarion, Airspan and VYYO. Lucent and Flarion are promoting mobile voice and data applications that would be competitive with existing wireless voice and data carriers. Airspan and VYYO have focused on fixed broadband data applications with an eye towards mobility in subsequent generations of equipment.

As more New Licensees began to express an interest in deploying wireless systems additional equipment vendors have likewise indicated the desire to develop and manufacture equipment for the 700 MHz band. However, one question faced by all of these vendors has to do with their allocation of valuable resources – that is, at this time is it a wise investment of their time, money and resources to develop 700 MHz banded equipment based on what they see as the reasonable near term future of the Lower 700 MHz band? The key factors under consideration focus on the status and pace of the DTV Transition and the likelihood of New Licensees being able to deploy their equipment. Cavalier and the other New Licensees have had to convince the equipment manufacturers that there is and will continue to be demand for their equipment in order to take the vendors’ “interest” in the 700 MHz band to “commitment” to support the band with equipment. Our efforts are now beginning to pay off.

In October 2003, a two-day meeting was held where over 80 of the 110 new Lower 700 MHz licensees actively participated and heard presentations from 11 different equipment vendors and service providers. The equipment discussed used different technologies in some instances, with vendors focusing initial equipment offerings on various potential applications. Among the applications discussed were fixed wireless broadband access, mobile wireless voice and broadband data, “nomadic” voice and data,

fixed wireless voice systems as a competitor to or replacement alternative for the more expensive fixed wireline voice systems, and even a mobile television broadcasting application. We also discussed and approved the formation of an association to collectively represent the interests of all 700 MHz licensees, including new licensees in the Upper and Lower 700 MHz bands.

Several New Licensees, Cavalier included, have also spent time and effort with several equipment vendors over the past 12 months attempting to find solutions that would allow us to provide new services in markets where there currently are television interference concerns. We are striving to find a way to co-exist with television stations in the more congested markets, and are optimistic that a solution may be available in all but the most congested markets where we have co-channel interference on both Channels 54 and 59. Equipment vendors have been encouraged to and are actively testing equipment to determine the level of interference their equipment would have on television stations and viewers, as well as the impact of co-and adjacent channel interference on the manufacturers' equipment and consumer devices.

Cavalier and other New Licensee are working to identify the actual level of television interference in markets where there currently are NTSC and DTV station allocations on Channels 54 or 59, as well as channels adjacent thereto. For example, Cavalier has discovered that in one market a co-channel NTSC station's programming signal cannot be detected in a significant portion of the geographic area covered by our license even though that geographic area lies within the NTSC station's Grade B contour. We are confident that similar results can be found in many other Lower 700 MHz markets. All we need now is time and Commission assistance in developing the

mechanism that would allow New Licensees such as Cavalier to put our licenses to use in congested markets which only *appear* to have television interference based on Grade B contours and signal propagation prediction models.

Cavalier and other New Licensees are also working to identify potential band clearing opportunities. For example, Cavalier has found an in-core replacement channel for an un-built co-channel DTV station in one market. We are confident that other opportunities exist nationwide to find alternative in-core replacement channels for out-of-core NTSC and DTV stations, but those opportunities may effectively disappear if the Commission determines to grant a second channel to Secondary Stations. Regardless of the “secondary” nature of the potential new digital stations, we believe the Commission would be discouraged from allowing an out-of-core station to move in-core and displace a recently constructed digital Secondary Station. Furthermore, it is certainly possible that the new in-core Secondary Station could be an affiliate of the out-of-core station, thereby sufficient to discourage the out-of-core station from agreeing to displace its affiliate’s new in-core digital station in a 700 MHz band clearing arrangement.

All that being said, we would like to make it clear to the Commission that New Licensees have been working hard to be in the position where we can now begin to put our licenses to work and provide new 700 MHz band wireless services to the public. This is particularly true for many New Licensees in rural America where broadband access does not exist for many Americans. **The Commission’s assumption that the 700 MHz band, at least with respect to Channels 54, 54 and 59, will remain dormant well into the future or until the end of the DTV Transition is wrong.** Therefore, due to the interference protection that Secondary Stations must provide New Licensees, for

all practical purposes channels 53, 54, 55, 56, 58, 59 and 60 would be extremely undesirable for any Secondary Station and should not be viewed as *available spectrum*.

### **III. GRANTING SECONDARY STATIONS AN ADDITIONAL CHANNEL FOR DIGITAL OPERATIONS WOULD BE HARMFUL TO CAVALIER AND OTHER NEW LICENSEES.**

Granting Secondary Stations a new channel for digital operations would be harmful to Lower 700 MHz licensees. That is true whether the new channel is located in-core or out-of-core, *but especially true if the out-of-core channels are to be used*. If in-core channels are used, then 700 MHz band clearing opportunities could disappear. Furthermore, there is absolutely no compelling need at this time to introduce additional and unnecessary interference from Secondary Stations on the in-core channels, especially in the markets which already are congested. Regardless of the “secondary” status of the new Secondary Stations, the NTSC and DTV stations would still have to deal with them. That takes time and money that would be better spent to “establish procedures and policies that will assure both an equitable channel election process and a spectrum-optimizing repacking process.”<sup>1</sup>

Potential interference from a new Secondary Station would have to be analyzed not only at the inception of the Secondary Station’s digital broadcast operations, but every time the DTV station in or near the particular market increased power to meet interim and/or final replication and maximization deadlines. The situation would be further exacerbated if new digital Secondary Stations were allowed to begin operations at reduced power and then add power as consumer acceptance of digital television

---

<sup>1</sup> See, Comments of The Association For Maximum Service Television, Inc. and The National Association of Broadcasters (“AMST/NAB Comments”) in connection with the Second Periodic Review of the

increased. Delaying or frustrating the existing DTV stations' ability to make channel elections will delay the entire DTV Transition, and that harms New Licensees.

Use of out-of-core channels for new Secondary Station digital operations will have a direct adverse impact New Licensees in the market area because, "secondary" or not, New Licensees will still have to deal with the new Secondary Stations. That takes time, money and effort which would be better spent providing new wireless services to the public. Undoubtedly disagreements will arise between New Licensees and the Secondary Stations over whether or not the Secondary Station is actually interfering with New Licensee's operations, and the extent of actions the Secondary Station must take to alleviate the interference. There is no telling how long it would take to resolve the conflict. The Secondary Station would have to shut down until the conflict is resolved. If the station is required to shut down, then it not only has lost its investment in the new station, it has harmed its viewers who purchased digital equipment in order to receive its programming. If the Secondary Station does not have to shut down until the matter is resolved, then it really is not "secondary" to New Licensees.

Secondary Stations operating on an out-of-core channel may also be required to shut down or substantially curtail operations from time-to-time as New Licensees test different equipment under various operating conditions. Sporadic over-the-air digital programming from a Secondary Station would not serve to encourage consumer purchase of digital televisions, but discourage such investment. That clearly does not promote the DTV Transition. If the Secondary Station does not have to shut down or substantially

---

Commission's Rules and Policies Affecting the Conversion To Digital Television, MB Docket No. 03-15 ("DTV Second Periodic Review") (Comments dated April 21, 2003), at p. 1.

curtail operations in order for a New Licensee to test equipment whenever they want to, then the Secondary Station really is not “secondary” to New Licensees.

As discussed below, additional over-the-air digital programming is not likely to have a meaningful impact on consumer adoption of digital television. Secondary Stations which would like to operate in digital have, or should have, the better and more economical alternative of “flash” converting to digital on their analog allotments. Therefore, there is no compelling reason why Secondary Stations should be granted an additional channel for digital operations at this time or why any out-of-core channel should ever be authorized for such purpose. Secondary Stations and the broadcast industry in general, would be better served by the Commission delaying the grant of a separate channel to Secondary Stations until AFTER all DTV stations have made their channel elections. Only at that time will the Secondary Stations be able to make an informed channel decision.

Cavalier and other New Licensees are the entrepreneurs for new wireless services in the 700 MHz band. New Licensees have been and continue to work hard to provide new wireless services in the 700 MHz band and will begin doing so in many market areas in the near future. Instead of frustrating the efforts of New Licensees such as Cavalier by injecting additional and unnecessary interference issues and concerns into the 700 MHz band, the Commission should be attempting to encourage our use of our licenses for new wireless services by assisting in *clearing* the 700 MHz band of what television interference currently exists.

**IV. ADDITIONAL DIGITAL TELEVISION STATIONS WILL HAVE LITTLE OR NO MEANINGFUL IMPACT ON CONSUMER ADOPTION OF DIGITAL TELEVISION AT THIS TIME. THERE IS NO NEED OR COMPELLING REASON TO GRANT SECONDARY STATIONS A SEPARATE CHANNEL FOR DIGITAL OPERATIONS AT THIS TIME.**

According to the National Association of Broadcasters (“NAB”),<sup>2</sup> as of October 16, 2003 over 99% of the nation’s television households are located in markets where digital television programming is being broadcast over-the-air. 82.19% of the more than 106 million television households are located in markets with 5 or more operating digital broadcast stations and 56.12% of the U.S. television households are located in markets with 8 or more operating digital stations. Digital programming is abundantly available over-the-air, it just not being watched!

Consumer adoption of digital television is slow but growing. The consumer demand that is there has more likely been driven by cable and satellite digital programming than over-the-air broadcast digital programming. The problem is not the lack of digital over-the-air programming, but the fact that approximately 85% (or more) of the nation’s television households do not rely on over-the-air television programming in the first place. They get their programming from cable and satellite providers.

Broadcasting additional digital programming from Secondary Stations to a small and vanishing consumer market is not likely to have any meaningful impact on consumer adoption of digital television at this time. Maybe later, but not now. What we really need is to get the digital programming that is currently being provided by over 1000 DTV stations in front of the largest number of television households, and that means carriage of digital programming by cable, satellite and other MVPD entities.

---

<sup>2</sup> See, [www.nab.org](http://www.nab.org) (last visited November 17, 2003).

The broadcast industry recognizes that over-the-air digital broadcasting will have marginal incremental impact on consumer demand for digital programming until such time as their digital programming is required to be carried by cable and other MVPD providers. That is why digital “must carry” is such a critical issue to the broadcast industry and should be the most critical issue to the Commission with respect to the DTV Transition. Once that critical issue is resolved then stations will be better able to afford full power digital operations and to broadcast multiple digital programming streams. Once the full power stations really begin multi-casting and HDTV operations that reach into the vast majority of the nation’s television households, then consumer demand for digital television will grow and equipment prices would decline. Once digital equipment prices begin to approach prices for analog television equipment, more consumers will be able to afford digital television sets and receivers. Once more consumers can afford to purchase digital sets that have receivers capable of effectively receiving over-the-air digital programming, and then they will be able to see and enjoy the real benefits of adoption of digital television technology.

We urge the Commission to spend its time and efforts addressing the real problem with the DTV Transition. Adding Secondary Stations into the fray at this stage of the game is unnecessary and will be counterproductive. If full power broadcast stations are having such a difficult time financially with the simultaneous operations of a DTV and an analog station, then it is highly likely that the financial difficulties of undertaking such an effort will be even greater for Secondary Stations, particularly those in rural markets.

There is little or no need for additional digital programming in congested markets where there already exists multiple DTV stations in operation. Adding Secondary Station



digital operations in congested markets will have little meaningful impact on consumer acceptance while at the same time creating additional interference issues that the DTV stations in those markets will have to deal with. Furthermore, at this stage of the DTV Transition and level of consumer adoption of digital television, there realistically is little need for additional digital programming in rural America at this time. If portions of rural America do not have access to digital over-the-air programming, then it is most likely because the DTV stations serving the particular market have not replicated their service areas with digital signals. The answer there lay not in introducing new Secondary Station digital operations but expediting replication and maximization deadlines.

**V. GRANTING SECONDARY STATIONS A SECOND CHANNEL FOR DIGITAL OPERATIONS WOULD BE HARMFUL TO THE DTV TRANSITION.**

Granting Secondary Stations a separate in-core channel for digital operations is much more likely to extend than expedite the DTV Transition. DTV stations should not be required to deal with additional interference on the in-core channels from Secondary Stations, especially since the Secondary Station digital operations are unlikely to have any meaningful impact on consumer adoption of digital television.

At the very earliest Secondary Stations should be given the opportunity to broadcast digitally on a second channel once all DTV stations have made their respective channel elections. Realistically it would be better for the broadcast industry as a whole to provide DTV stations sufficient time after post-transition channel repacking to experience the then existing interference issues before granting a second channel to Secondary Stations. The only exception should be for those instances in which there is no digital programming to a particular area provided by DTV stations operating with full

replication and maximization. Even then Secondary Station digital operations should be limited to in-core channels.

**VI. GRANTING SECONDARY STATIONS A SEPARATE DIGITAL CHANNEL WOULD FRUSTRATE THE COMMISSIONS ABILITY AND WILLINGNESS TO ADOPT OR AUTHROIZE CLEARING MECHANISMS DESIGNED TO CLEAR THE 700 MHZ BAND OF TELEVISION INCUMBENCY.**

To the extent that there exists available spectrum within the core television channels that could be used for television broadcast operations at this time, the Commission should endeavor to utilize that spectrum in order to meet its clearly stated goal of the rapid recovery of out-of-core spectrum for new wireless services. One opportunity for voluntary band clearing may be with the use of unused spectrum within the core television band that could be used for reduced power operations.

For example, an out-of-core analog station may be encouraged to cease analog operations and convert to digital on an in-core channel if it were allowed to use in-core spectrum on a low power basis to continue to provide analog programming to a portion of its service area. Since that station would be operating primarily in digital it would be entitled to “must carry” rights for its digital programming, thereby providing digital programming via MVPD to the vast majority of the households in its market. As noted above, that is what is really required at this time to drive consumer adoption of digital television in any meaningful sense. That would also protect against the loss of access to that station’s analog programming during the DTV Transition, although those viewers would still have access to many other analog programming streams from other stations in the market with continuing analog operations. At the same time the analog channel located outside the core would be cleared for new commercial wireless services, not only

use by New Licensees with licenses for that relinquished channel, but possibly any New Licensee on an adjacent channel as well.

Another opportunity for clearing an out-of-core station would be where a small station facing financial or other difficulties operating both an analog and a DTV station has a digital channel allotment on an out-of-core channel. The DTV station may not be operating at all at this time or if operating, doing so at reduced power in order to provide a digital signal that covers only their community of license. Such a station may be encouraged to relinquish its out-of-core channel and operate on an available in-core channel at reduced power substantially equivalent to, or even greater than, the power at which it was then operating on the out-of-core channel. However, in order to encourage the DTV station to undertake such a clearing process that station would likely require that it still be provided interference protection for its full allocated service area until the end of the DTV Transition. That type of interference protection should be provided in band clearing arrangements.

The loss of that DTV station's prospective digital programming signal over its unreplicated service area during the DTV Transition is unlikely to have a material adverse impact on consumer adoption of digital television in that area, especially if other digital stations are providing over-the-air digital programming into the area. That "clearing" station would still be participating in the DTV Transition by providing digital programming at reduced power over a portion of their service area, and would be able to gain experience from digital operations in a more economically feasible manner. A voluntary band clearing arrangement of this sort would promote the DTV Transition,

protect the small station from financial distress and clear the vacated out-of-core channel in that market area (and potentially any adjacent channel) for new wireless services.<sup>3</sup>

The use of available in-core spectrum for voluntary band clearing would be a more efficient use of scarce and valuable spectrum than using it for Secondary Station digital operations, especially in or near any congested markets. There may be a benefit to Secondary Station digital operations on in-core channels in a few rural markets that are not, and most likely will not, be served by full power stations; however, until the “must carry” issue is resolved and consumer adoption of digital television increases overall, any such “benefit” most likely will be minimal and economically unjustifiable. If the rural area truly is unserved or underserved by existing DTV stations, then there should be ample room on in-core channels for a separate digital channel. The better policy position at this time, however, would be to clear the 700 MHz band of television incumbency and allow the DTV Transition to proceed on the in-core channels at whatever pace is driven by consumer demand.

**VII. SECONDARY STATIONS SHOULD BE ALLOWED TO FLASH CONVERT ON THEIR ANALOG CHANNELS, AND SHOULD BE REQUIRED TO CONVERT ONCE THEIR PRIMARY STATION CONVERTS TO DIGITAL**

Secondary stations should be allowed to flash convert to digital on their analog channels prior to when they would be otherwise required to convert, and in certain circumstances they should be required to convert to digital operations. LPTV stations which are not merely serving as translators should be required to convert to all digital operations no later than the time the other stations in its market transition to digital. The

---

<sup>3</sup> This example is closely akin to comments of WLNY-TV Inc in their ex parte communication with Ms Marlene H Dortch dated October 15, 2003 in connection with the *DTV Second Periodic Review*.

DTV Transition most likely will not end at the same time across the nation. At the time the full power stations in a given market transition to digital programming, then any true LPTV station in that market should likewise be required to transition. The goal is to move the nation to digital broadcasting and not to promote continued dual analog and digital operations in any market.

LPTV stations which are actually translator stations, television translator stations and booster stations should be required to convert to digital on their analog channel no later than the time their primary station converts to digital. In no instance should such stations be allowed to down-convert digital signals from the primary station to analog. That does nothing to promote the DTV Transition and actually prolongs the process.

**VIII. SHOULD THE COMMISSION PROCEED TO GRANT SECONDARY STATIONS ADDITIONAL SPECTRUM FOR NEW DIGITAL OPERATIONS, IT MUST ENSURE THAT SUCH STATIONS ARE OPERATED IN A MANNER THAT EFFECTIVELY PROMOTES THE DTV TRANSITION.**

Should any Secondary Station apply for a second free 6 MHz channel to provide digital programming, the Commission must first ensure that such station will in fact operate timely and in a manner that will in fact promote the DTV Transition. Financial ability should be addressed at the front-end with only those Secondary Stations clearly demonstrating the financial ability to construct and operate separate digital facilities being granted such a right. There should be no “financial inability” extensions of construction deadlines and new digital Secondary Stations should be required to construct and operate facilities that replicate their then existing service area. If Secondary Stations are to occupy additional spectrum, then they must be required to use it for its intended purpose, but with full knowledge that they could be required to shut down or

substantially curtail operations to prevent interference to any New Licensees such as Cavalier. These proceedings should not be utilized for a spectrum “land grab” by Secondary Stations.

Secondary Stations operating digitally, whether by flash conversion or on a separate channel, should be subject to the same minimum video program service requirements applicable to DTV stations. Reduced hours of operation and reduced programming requirements serve little purpose at this stage of the DTV Transition. Secondary stations should not be allowed to use their “free” spectrum to provide A&S services alone without at least one digital programming stream during any part of the day. If any television station, secondary or full power, wants to provide wireless voice and data services exclusively during part of a day, then they can bid and pay for appropriate licenses.

Secondary Stations should be allowed to convert HDTV signals from their primary stations to SDTV and to multi-cast programming from two or more primary stations. If the primary station’s programming is a subscription based service, then the Secondary Station should be able to pass it thorough as a subscription service. However, in no event should a Secondary Station be allowed to take what otherwise is a free over-the-air programming signal from a primary station and offer that programming on a subscription basis. That certainly would not promote free over-the-air television.

Finally, if the Commission determines to allow out-of-core channels to be used for new Secondary Station digital operations, it must establish clear and concise rules and regulations for expedited resolution of conflicts between new Secondary Stations and new licensees such as Cavalier. Those conflicts will arise. Cavalier and other New

Licensees will begin providing services in many markets in the near future. New Licensees such as Cavalier should be expected to aggressively protect their respective licenses and customers. Should the Commission proceed to grant out-of-core channels to Secondary Stations, then it should use these proceedings to make it abundantly clear that the new digital stations are in fact “secondary” to New Licensees and that the risks to a Secondary Station that its operations will have to be terminated or substantially curtailed are great.

The Commission has already received over 2000 “displacement relief” applications from Secondary Stations, some or many of which may be located on out-of-core channels.<sup>4</sup> That alone should be ample evidence that the out-of-core spectrum is not suitable for additional Secondary Station digital operations. The risks of harm to Secondary Stations and their viewers, to new 700 MHz licensees such as Cavalier and our customers, as well as to existing out-of-core stations, by granting separate 6 MHz channels to Secondary Stations clearly outweighs any benefit to the DTV Transition that such action could reasonably be expected to provide.

## **IX. CONCLUSION.**

The Commission has taken great strides in the past 12 months to promote the DTV Transition. There is a real risk that certain of the actions under consideration in these proceedings would actually result in a step backwards, particularly the potential grant of separate digital channels to Secondary Stations and the potential grant of any out-of-core spectrum to any Secondary Station. There will be a time and a place for meaningful Secondary Station participation in the DTV Transition, but that time just is not now. We urge the Commission to focus its efforts at this time on the main issues

facing the DTV Transition, which are digital “must carry”, channel election, replication and maximization, and on crafting alternative 700 MHz band clearing arrangements. Once those issues are resolved, then the grant of separate channels to Secondary Stations can be addressed in a much more informed and efficient manner.

Respectfully submitted  
CAVALIER GROUP, LLC

\_\_\_\_\_/s/ R. Nash Neyland\_\_\_\_

R. Nash Neyland

Dated: November 25, 2003

---

<sup>4</sup> See, footnote 56 of NPRM